

Department of Justice

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Kankakee Area Man Sentenced to 10 Years in Prison for Clean Air Act Violations Involving Asbestos

Urbana, Ill. – Duane “Butch” O’Malley, who was convicted by a federal jury on Sept. 26, 2011, for the illegal removal, handling and disposal of asbestos from a Kankakee building in August 2009, was sentenced today to 10 years in prison (120 months) by U.S. District Judge Michael P. McCuskey. O’Malley was taken into law enforcement custody at the conclusion of today’s hearing. O’Malley was also ordered to pay restitution of \$47,086 to the U.S. Environmental Protection Agency related to the clean-up of illegally disposed asbestos. In addition, O’Malley was ordered to pay a fine of \$15,000.

O’Malley, 60, of the 5600 block of North 5000 E Road, Bourbonnais, was charged in June 2010 with five felony violations of the Clean Air Act, along with Michael J. Pinski, 42, of Kankakee, and James A. Mikrut, 49, of Manteno. Pinski entered a plea of guilty on Aug. 19, 2011, to one count of violation of the Clean Air Act; Mikrut pled guilty on Aug. 24, 2011, to five counts of violating the Act. The sentencing hearings for Pinski and Mikrut will be scheduled at a future date.

During O’Malley’s trial, the government presented evidence that O’Malley, owner and operator of Origin Fire Protection, was hired by Pinski in August 2009 to remove asbestos-containing insulation from pipes in a five-story building at 197 South West Ave., in Kankakee, that was owned by Pinski through his company, Dearborn Management, Inc. Evidence was presented that neither O’Malley nor his company was trained to perform the asbestos removal work and that O’Malley agreed to remove the asbestos insulation for an amount that was substantially less than a trained asbestos abatement contractor would have charged to perform the work. Further, O’Malley arranged for Mikrut to recruit and oversee workers to remove the asbestos.

The government’s evidence showed that various provisions of the Clean Air Act and U.S. Environmental Protection Agency (EPA) regulations were violated, including: failure to properly notify the EPA; failure to have trained on-site representatives present; failure to ensure the asbestos insulation was adequately wetted while it was being stripped and removed; failure to mark vehicles used to transport the asbestos-containing waste material; and, failure to deposit the asbestos in a waste disposal site for asbestos. Instead, the asbestos insulation was stripped from the pipes while dry, and then placed in more than 100 large, unlabeled plastic garbage bags, which were dumped in an open field in Hopkins Park, resulting in asbestos contamination of the soil.

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Under provisions of the Clean Air Act, the EPA has promulgated rules, regulations and requirements to control the removal, handling and disposal of asbestos, a hazardous air pollutant.

Any owner or operator of a renovation or demolition activity which involves removal of specified amounts of asbestos-containing material must comply with the EPA regulations.

At the sentencing hearing, which began on May 16, 2012, reconvened on July 17, 2012, and concluded today, the government presented evidence that the manner in which the asbestos had been removed from the building exposed the workers hired by O'Malley to dangerous asbestos-laden dust, which endangered their health. The government recommended a sentence of 151 months in prison and requested a fine of \$156,324 to provide for future medical monitoring of the workers who were exposed to the asbestos. Defense counsel requested a sentence of 60 months or less. Following the sentencing, O'Malley gave notice of his intent to appeal his conviction and sentence.

"To increase his profits, a jury found that O'Malley knowingly disregarded federal environmental laws that require asbestos-containing materials be safely removed and properly disposed," said U.S. Attorney Jim Lewis, Central District of Illinois. "Today's sentence is a consequence of the defendant's flagrant disregard for his workers, the public, and the environment in exposing them to dangerous airborne asbestos fibers."

"There is a right way to remove asbestos, a legal way," said Randall Ashe, Special Agent in Charge of EPA's criminal enforcement program in Illinois. "Any other method of removing asbestos is illegal and unsafe. There is no safe level of exposure to asbestos, and the defendant's reprehensible conduct put people's health at great risk. This case should serve notice that EPA and its partner agencies will prosecute anyone who tries to save money by breaking the law."

The charges were investigated by the U.S. Environmental Protection Agency, Criminal Investigation Division, with assistance from the Illinois Environmental Protection Agency and the U.S. Environmental Protection Agency's Superfund Division. Assistant U.S. Attorney Eugene L. Miller and Special Assistant U.S. Attorney James Cha prosecuted the case.

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